

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:

Amendment of Part 90 of the)	PR Docket No. 93-144
Commission's Rules to Facilitate)	RM-8117, RM-8030
Future Developments of SMR)	RM-8029
Systems in the 800 MHz Frequency)	
Band)	

To: The Commission

COMMENTS OF THE E.F. JOHNSON COMPANY

The E.F. Johnson Company ("E.F. Johnson"), by its attorneys, pursuant to Section 1.415 of the Rules and Regulations of the Federal Communications Commission ("FCC" or "Commission") hereby submits its Comments in response to the Notice of Proposed Rule Making ("NPRM") adopted in the above-referenced proceeding designed to promote continued growth of the 800 MHz Specialized Mobile Radio ("SMR") industry.^{1/}

I. INTRODUCTION

E.F. Johnson is a leading designer and manufacturer of radio communications systems and specialty communications products for commercial and public safety use. Founded 70 years ago as an electronic components manufacturer, E. F. Johnson entered the radio communications equipment market in the late 1940's and is one of the three largest providers of land mobile radio systems in the United States. E.F. Johnson is one of the leaders in the SMR industry with a significant share of the domestic installed

^{1/} Notice of Proposed Rule Making, PR Docket No. 93-144, FCC 93-265, released June 9, 1993.

infrastructure and subscriber radio units. The company has established trunking protocols and open architecture standards with its clearchannel LTR®, a multichannel trunked radio product.

The Commission's action is responsive, in part, to several petitions for rule making and requests for waiver of the regulations which suggest that the current rules thwart the development of wide area SMR systems and the accumulation of SMR channels. In response, the Commission proposes the establishment of an "Enhanced Mobile Service Provider" ("ESMP") licensing approach to assigning 800 MHz SMR channels for wide area use. An ESMP authorization would permit reuse of the channels, consistent with the co-channel protection required for current licensees, throughout a Major Trading Area ("MTA") or Basic Trading Area ("BTA") as those terms are defined by Rand-McNally. Existing licensees would have the first opportunity to establish ESMP systems. Subsequent applicants could request the use of up to 42 currently vacant SMR channels to initiate ESMP service.

E.F. Johnson is a licensee of 800 MHz SMR systems. In addition, it supplies equipment to hundreds of SMR systems across the country. Accordingly, it possesses a realistic vision of the current state of the SMR industry and the future of the service. It believes that the Commission's proposals deviate too greatly from the original concept for the SMR service. SMRs should continue to offer high quality dispatch service, allowing the user to satisfy critical communications requirements on a private carrier basis. SMRs continue to represent a logical evolution from shared, single channel private mobile communications systems.

There are regulations that plainly inhibit the growth of SMR operators that are currently endeavoring to meet these needs in a fashion that is responsive to customer

requirements. E.F. Johnson supports modification or elimination of those burdensome rules. However, the proposal in the NPRM goes beyond the elimination of restrictive regulations and attempts to transform the SMR service into a different category of communications service. Because there is a need for private carriers offering high quality, low cost dispatch service, the potential elimination of this alternative, which may be the unintended result of the current proceeding, is not in the public interest. Accordingly, E.F. Johnson is pleased to have the opportunity to submit the following Comments.

II. COMMENTS

A. The FCC's Proposals Are Not Market Responsive

The Commission correctly notes that there has been an evolution in a segment of the SMR industry towards compatible, wide area SMR networks. That evolution has been facilitated by large SMR operators that have been able to aggregate channels in major metropolitan areas. That aggregation process was initially undertaken to take advantage of economies of scale and provide customers with a wider area service offering. In so doing, the SMR operator could offer less expensive service over a broader geographic area, responsive to customer demands. For early consolidators, there were few regulatory impediments, because aggregation generally occurred in areas where spectrum usage was intense, and there were limited concerns regarding loading requirements. Operations in these major metropolitan areas were usually characterized by a preponderance of dispatch service and channels, in the aggregate were often used at well over the minimum of 70 units per channel.^{2/}

^{2/} In Fleet Call, Inc., 6 FCC Rcd 1533 (1991) the Commission recognized that channels licensed to a single entity could all be considered loaded if, in the aggregate,

In smaller markets, where channel usage was less intense because of either: 1) the provision of a greater percentage of interconnect traffic; or 2) less demand for dispatch, market conditions still made it attractive to aggregate channels to recognize the benefits

B. The Commission Should Investigate Other Alternatives to Eliminate the Burden of Current Regulations

Accordingly, E.F. Johnson does not support the elimination of the 40 mile rule in the fashion proposed by the Commission. Licensees should not be permitted to aggregate channels when economic circumstances do not justify that approach. Nevertheless, E.F. Johnson recognizes that the current regulatory structure is burdensome and impedes the ability to meet customer demand to provide wide area services. Other alternatives have been suggested by entities submitting petitions for rule making that would assist the creation of wide area SMR systems without allowing licensees to "warehouse" spectrum. Petitions submitted by A&B Electronics and the National Association of Business and Educational Radio ("NABER") both contain approaches which would reduce or eliminate the negative effects of the current regulations. In addition, the element of the approach suggested by the American Mobile Telecommunications Association ("AMTA") which would allow current licensees to expand their coverage areas, in cooperation with other existing licensees deserves additional consideration. However, none of these recommendations involves the licensing of channels in areas where they are plainly not required today to meet customer demands.

C. E.F. Johnson's Modified EMSP Approach

In order to overcome the limitations of today's regulatory restrictions, but preserve the effect of marketplace forces, E.F. Johnson recommends the adoption of a modified approach to EMSP licensing. First, it urges that at 800 MHz, EMSP licenses

service area. E.F. Johnson agrees with the Commission that initial EMSP license eligibility should be restricted to applicants that were licensed and had constructed one or more SMR category channels by May 13, 1993. E.F. Johnson agrees with the Commission's recommendations concerning the establishment of consortia, the resolution of mutually exclusive applications and other elements of the plan for the submission of applications during the initial filing window. Under E.F. Johnson's approach, subsequent applications could be submitted by SMR applicants or consortia thereof, on a first come, first served basis. These applications could be granted to the extent that they did not conflict with a previously granted license for either an EMSP system or a traditional, single site SMR system.

The Commission, should not, however, define the market for the EMSP applicant. Instead, the coverage area of the EMSP system should be defined by the overlapping contours of already constructed stations that are part of the application.^{3/} E.F. Johnson recognizes that the establishment of licensee defined service areas is impractical in instances where there are no operational or licensed facilities. However, because E.F. Johnson's approach, which is more market responsive, is based upon the authorization of EMSP licenses to existing systems, this impracticality would not exist.

Under the Commission's approach, licensees would be able to secure the use of frequency assignments throughout a broad geographic area, making the channels unavailable to any other potential operators. Even though the FCC may adopt a requirement for licensees to serve 80% of the population or market area, 20% of either

^{3/} E.F. Johnson generally recommends that the Commission allow applicants to define their coverage area in a fashion similar to that approved by the Private Radio Bureau this fall. See, letter of December 23, 1992 from Ralph A. Haller, Chief, Private Radio Bureau, to Mr. David E. Weisman ("Weisman Letter").

could remain unserved by an entity whose authorization would prevent another entrant from potentially covering the unserved area. If the Commission adopts E.F. Johnson's recommendations, the EMSP licensee would already be providing service to all areas that would be covered by the authorization, ensuring that there will be no unserved areas where all the channels are licensed, but not in operation.

The Commission asks whether intracategory sharing opportunities should extend to EMSP systems. E.F. Johnson wishes to ensure that sufficient channels remain available to meet the needs of non-SMR licensees. However, because it has been many years since these channels were originally made available, their use at this time by SMRs would not likely have a significant negative impact on non-SMR users. The use of these frequencies, unlike those designated for SMR operations, are not coordinated by the Commission. Therefore, E.F. Johnson recommends that, to the extent that EMSP licensees wish to reuse non-SMR category channels, their proposed employment be coordinated with the appropriate frequency coordinating agency. EMSP licensees would not, therefore, be able to self-coordinate the use of these channels. However, once included in the EMSP authorization, they could be reused at all locations where co-channel separation requirements permit, and, to the extent requested by the EMSP licensee, could be constructed over a five year period.

D. Implementing EMSP Systems

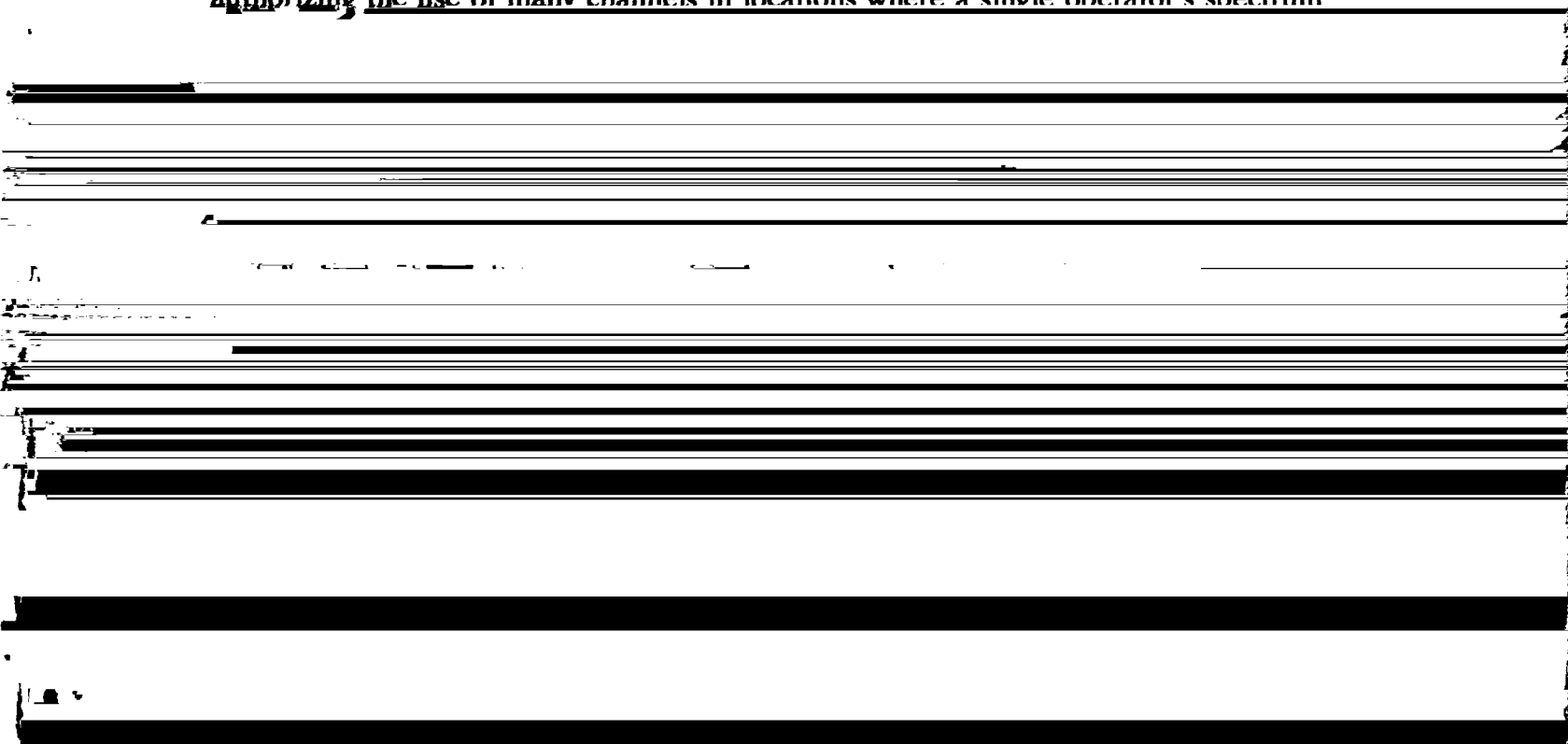
Unlike, for example, the proposed authorization of additional channels for 900 MHz SMR operations, the creation of 800 MHz EMSP systems will take place in an already crowded spectrum environment. Accordingly, E.F. Johnson agrees that EMSP licensees should be required to modify their licenses whenever an additional facility is

added or modified. This requirement is consistent with the self defined service area approach E.F. Johnson recommends. E.F. Johnson concurs with the Commission's proposal to require EMSP licensees to self coordinate their applications and electronically transmit the applications to the Commission. It also agrees with the proposal to permit licensees to operate on a temporary basis, if their applications meet the requirements of Section 90.621(b) of the regulations. Because E.F. Johnson proposes the use of self defined service areas, the considerations for adjacent EMSPs would be no different than those governing co-channel operations, i.e., EMSP licensees could use their authorized frequencies in areas where they would be permitted by Section 90.621(b) of the regulations, protecting existing co-channel users at locations where there are licensed facilities.

currently constructed throughout a self defined service area. It proposes that these licensees have five years, if they elect, to construct channels at locations where they are not currently licensed. This approach is similar to the regulations adopted recently which permit an extended implementation schedule for, among others, SMR licensees.^{4/} E.F. Johnson agrees, however, that if a licensee elects this option, it should be required to demonstrate the availability of sufficient resources in exchange for preventing others from using channels in locations where they are not currently licensed for a period of five years. It concurs, therefore, with the Commission's approach to require a performance bond or some other form of financial commitment to receive this additional period for construction.

III. CONCLUSIONS

The Commission has correctly recognized deficiencies in its regulations that inhibit the growth of wide area SMR systems that have been found to be necessary to meet customer demands. However, the Commission's approach goes too far by authorizing the use of many channels in locations where a single operator's spectrum



area services in a fashion that the regulations currently do not envision. Reuse of the channels should occur on a coordinated basis, with the licensee permitted up to five years to construct channels at locations where they are not currently in operation upon an appropriate demonstration of financial capability.

WHEREFORE, THE PREMISES CONSIDERED, E.F. Johnson Company submits the foregoing Comments and asks that the Commission act in a manner consistent with the views expressed herein.

Respectfully submitted,

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